

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST:)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3550
)	EEOC NO.: 21BA82245
KASIE WISE,)	ALS NO.: 09-0293
)	
Complainant.)	

ORDER

This matter coming before the Commission by a panel of two, Commissioners Sakhawat Hussain and Rozanne Ronen, presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CF3550, Kasie Wise, Complainant, and Chambers Marketing Group, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request, and the Complainant's Reply; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant filed a two-count charge of discrimination with the Department on February 5, 2008, perfected on May 29, 2008, in which she alleged that the Respondent harassed her because of her sex (female, relating to her pregnancy) (Count A), and that the Respondent discharged her because of her sex (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On May 8, 2009, the Department dismissed the charge for lack of jurisdiction because, at all relevant times alleged in the charge, the Respondent employed

fewer than 15 employees. The Complainant thereafter filed a timely Request on May 23, 2009.

2. Generally, in order to hold an employer liable under the Act, the employer must have employed.... "15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation." See 775 ILCS 5/2-101(B)(1)(a) (West 2009). However, in the case of allegations of sexual harassment and disability discrimination, the employer need only have employed one or more employees during the relevant time period. See 775 ILCS 5/2-101(B)(1)(b) (West 2009).
3. Sexual harassment is defined by the Act as:

...[A]ny unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

775 ILCS 5/2-101(E) (West 2009)

4. In its investigation, the Department determined that the Respondent had not employed 15 or more employees during 2006 and 2007. The Department further determined that the Complainant had not alleged either disability discrimination or sexual harassment. For that reason, the Department concluded that it lacked the jurisdiction to investigate both counts of the Complainant's charge.
5. In her Request, the Complainant concedes that the Respondent employed fewer than 15 employees during the relevant time period. The Complainant also concedes that the Department lacked jurisdiction over Count B of the charge, wherein she alleges discriminatory discharge, based on sex. Therefore, the Commission determines that the dismissal of Count B of the charge is sustained based on Lack of Jurisdiction.
6. However, in her Request and her Reply, the Complainant argues that the Department had the jurisdiction to investigate Count A of the charge because Count A of the charges alleges "sexual harassment." The Complainant concedes that whether or not the Complainant alleged "sexual harassment" as defined by the Act is determinative of the outcome of this matter.

7. There is a meaningful distinction under the Act between “sexual harassment” and “harassment based on sex.” “Sexual harassment” requires proof of some conduct of sexual nature, in that there must be allegations of unwelcome sexual advances or requests for sexual favors. See Jerry Lever and Wal-Mart Stores, Inc., IHRC, ALS No. S-10697, January 2, 2001, p. 4.
8. “Harassment based on sex,” on the other hand, is... “offensive conduct of any sort subject[ing] an employee to different terms and conditions on the basis of his or her gender.” Id. In other words, harassment based on sex is another form of sex discrimination. Therefore, in order for an employer to be held liable under the Act for “harassment based on sex,” there must be evidence that the employer meets the jurisdictional requirements of 775 ILCS 5/2-101(B)(1)(a) (West 2009).
9. The issue that the Commission must consider is whether or not the Complainant alleged in her charge “sexual harassment,” or “harassment based on sex.” In an effort to resolve that issue at the outset, the Department asserts in its Response to the Request that on April 13, 2009, the Complainant was specifically asked to clarify whether or not she believed she had been “sexually harassed.” The Complainant confirmed that the comments which formed the basis of Count A of her charge were related to her pregnancy and her sex, female. At that time, the Complainant made no assertion that she was alleging that conduct or comments of a sexual nature had occurred.
10. The Commission’s review of the Department’s investigation file leads it to conclude that the Department also properly dismissed Count A of the Complainant’s charge for lack of jurisdiction because the Respondent employed fewer than 15 employees during the relevant time period.
11. The problem with the Complainant’s argument is that she seeks to blur the difference between “sexual harassment,” which is a very specifically defined claim under the Act, and general harassment based on a protected class, in this case sex. In order to allege a claim of “sexual harassment” within the meaning of the Act, the Complainant must have alleged that there was conduct of a sexual nature. The Complainant made no such allegation in Count A of the charge. The Complainant herself confirmed that she was not alleging that conduct of a sexual nature had occurred.
12. In her Response and the Reply, the Complainant submits no additional evidence to demonstrate that Count A involved conduct of a sexual nature.
13. Therefore, because Count A of the Complainant’s charge does not allege “sexual harassment,” as defined by the Act, the Department properly determined that it lacked the jurisdiction to investigate Count A of the charge.

14. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of her charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Respondent, Chambers Marketing Group, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 16th day of September 2009.

Commissioner Sakhawat Hussain

Commissioner Rozanne Ronen